Supreme Court, U.S.
FILED

09-738 DEC 19 2009

No. 08-16498 OFFICE OF THE CLERK

In The
Supreme Court of the United States

JOHN PHILIPPS,

Petitioner,

v.

CITY OF OAKLAND, CALIFORNIA
KAREN P. TANDY, Administrator, U.S. DEA
SCOTT N. SCHOOLS, U.S. Attorney for the N.D. CA
ARNOLD SCHWARZENEGGER,
Governor of the State of California,

Respondents.

On Petition for a Writ of Certiorari To the United States Court of Appeals For the Ninth Circuit

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PETITION FOR A WRIT OF CERTIORARI

John Philipps
2337 Ransom Avenue
Oakland, CA 94601-7821
(510) 261-7821, (510) 575-4782
Petitioner in pro se

QUESTIONS PRESENTED

1. Whether the provisions of 21 U.S.C. S.A. section 822 et seq., rendered it unlawful for the State and Federal Defendants to institute criminal proceedings against Petitioner based on his cultivation of marijuana plants following the issuance to him of a Federal license in the form of an Employer Identification Number assigned by the Department of the Treasury, Internal Revenue Service.

2. Whether the above statute, combined with the Supremacy Clause of article VI of the Constitution, rendered it unlawful for the state Defendants to institute criminal proceedings against Petitioner based on the above set of facts.

3. Whether Respondents' institution of criminal proceedings against Petitioner under the said circumstances was a violation of his Constitutional rights under the Due Process and Equal Protection Clauses of the Fourteenth Amendment.

PARTIES

The petitioner is John Philipps.

The respondents are City of Oakland, California, Karen P. Tandy, Administrator, U.S. DEA Scott N. Schools, U.S. Attorney for the N.D. CA Arnold Schwarzenegger, Governor of the State of California.

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11.2c (11.14) In exceptional circumstances,
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authority to deny re-hearing en-banc. Error
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* Please reference original appendix mailed to the court on October 19, 2009.

OPINIONS BELOW

The opinion of the District Court December 14, 2007 is unreported . The orders of the Court of Appeal, July 20, 2009 are likewise unreported.

STATEMENT OF JURISDICTION

The Court of Appeals' judgment was entered on January 27, 2009. A timely petition for rehearing was denied on July 20, 2009. The jurisdiction of this Court is invoked under 28 U.S.C. sec. 1254 (1) and such other and further provisions of law as the Court thinks proper. This Petition is based on a decision of the District Court, affirmed by the Circuit Court of Appeal, involving Federal statutory and Constitutional issues.

CONSTITUTIONAL AND STATUTORY PROVISIONS, REGULATIONS INVOLVED

The Supremacy Clause of the Constitution, art. VI., provides in relevant part:"{T}he Laws of the United States...shall be the supreme Law of the Land...any Thing in the Constitution or Laws of any State to the Contrary notwithstanding"

The Fourteenth Amendment to the Constitution provides all citizens with the rights to Due Process and the Equal Protection of the laws.

Title 21, Section 822 (c) of the U.S. Code Provides that:

> certain persons are entitled to possess any controlled substance or list 1 chemical [such as marijuana] without being required to "register" accordingly with the Federal government: "A...warehouseman, or an employee thereof whose possession of the controlled substance or list 1 chemical [is] in the usual course of his business or employment".
> and section 885 provides that no licensure under that Title, once given, shall be revoked.

California Health and Safety Code section 11362.5 makes legal the cultivation and possession of medicinal cannabis under a framework of specified procedures, under which at all relevant times medical marijuana dispensaries have been operating under municipal license in the City of Oakland.

STATEMENT OF THE CASE

This case raises significant issues about the meaning, scope and applicability of 21 U.S.C 822 and its declared exemptions for certain classes of persons from the requirement of "registration" in order to lawfully possess a List 1 substance such as marijuana. These issues have never been addressed and clarified by the courts; and it is in the public interest that this Court do so in a definitive manner, so that Federal and state agencies as well as the public may be clearly informed of the parameters within which possession of marijuana is lawful under Federal law.

In addition, in the light of the clarified meaning to be given to the said statute, it is in the public interest to have clarification of the extent to which 21 U.S.C 822 combines with the Supremacy Clause of article VI of the Constitution to prevent state agencies from enforcing any laws or policies at variance with the said Federal law.

Finally, the enforcement of California and purported Federal law against Petitioner on the facts of this case violated his rights under the Equal Protection and Due Process Clauses of the Fourteenth Amendment; and only this Court is qualified to declare the extent of those rights in a manner that will bring the conduct of law enforcement agencies of each of the states into alignment with the U.S. Constitution in relation to all American citizens.

On or about July 30, 2004, Petitioner John Philipps, having operated a marijuana business in the city of Oakland, California, under the name of Oakland Hemp Bank off-site of First Hemp Bank and Distribution Network, having obtained a Federal Tax I.D. number (95-4743693) therefore on or about December 17, 2004, and having been arrested and prosecuted by state and Federal authorities, filed in U.S. District Court for the Northern District of California, Case # C07-03885, against the City of Oakland, the Administrator of the DEA, the U.S. Attorney and the Governor of California. That case is based on a Petition for Declaratory and Injunctive Relief. It alleges that:

> ["Statement of the Case"]"Petitioner is federally licensed to grow and sell marijuana.... Respondents, unless enjoined

by this Court, will continue to attempt to cripple Petitioner's business".

"The State of California enacted the Compassionate Use Act in 1996 in order to make marijuana available for medical purposes. See California Health and Safety Code sec. 11362.5."

"Despite the fact that Petitioner had all necessary permits and paid all taxes due for his business, he was prosecuted...for running his business and...denied a right to earn a living in that Respondent...will not allow him to open a storefront in downtown Oakland."

The suit below is based on causes of action for Equal Protection of the Laws; Right to Earn a Living; Violation of the Supremacy Clause; Access to the Federal Grand Jury; and a Declaration of the Unconstitutionality of 21 U.S.C. 801 et seq., i.e. the bulk of the modern Federal drug laws, although not section 822 which removes the business from the criminal provisions of Title 21.

This Petition relates primarily to the first and third of the above claims.

On December 14, 2007 the District Court wrote an opinion and issued an order dismissing the suit on the principal Constitutional, state law and Title 21 issues. Judgment against Petitioner was entered on April 28, 2008.

Petitioner filed a timely Notice of Appeal. A mental disability which resulted in Petitioner's opposition to one or more of the motions to dismiss being filed late, also prevented Petitioner from filing anything more than a document embodying a rudimentary statement of the basis of his appeal .

Petitioner also tried to acquire legal counsel; however he could not, because the lawyers he contacted opined that his case was too political. He was also prevented from filing prompter or more extensive pleadings by his being in pro per in two other civil cases at the same time, against lawyers who had failed him in their representation in connection with the case that stemmed from the arrest that prompted the subject lawsuit; as well as protests pertaining to Code violations by the City of Oakland about his lawful homing pigeon business. All the above coincidentally occurred in the same week in which the Federal Court pleading was due: October 18, 2007.The Ninth Circuit summarily disposed of the Appeal as set forth in the "Opinions Below" section hereinabove.

Petitioner brings the present Petition because his case does present substantial and meritorious issues, not heretofore resolved by the courts, on which this whole nation deserves and needs clarity, concerning the interactions of 21 USC 822 (c)(2)(3), the Supremacy Clause, and the rights to Due Process and Equal Protection, in relationship to state laws criminalizing the possession and sale of marijuana.

REASONS FOR GRANTING THE PETITION

This Petition should be granted in order to create clarity in an area of the law where there is presently undesirable gaping obscurity, concerning: the immunities conferred by 21 USC 822 (c)(2) (assuming that the entire chapter of which it is a part is Constitutional), the extent to which they are binding on Federal agencies such as the DEA, and to which the Supremacy Clause makes them binding on state agencies; as well as the interplay of the above with the Equal Protection and Due Process Clauses of the Fourteenth Amendment.

Does not 21 USC 822 (c) (2) (3) create immunity for someone such as the Petitioner who was acting in the capacity of a "warehouseman", a common carrier, under the language of that statute? Do not the Treasury's issuance to him of a Federal

Tax ID Number, 80-0398589 issued to a business identified as a Federal Medical Marijuana-, and his payment of taxes, constitute a Federal license to proceed with this business enterprise? Does not the DEA, state and city's interference with that business and prosecution of Petitioner accordingly violate the Supremacy, Due Process and Equal Protection Clauses, such that their actions should be declared illegal and enjoined?

We respectfully submit, not only that the answers to all of these questions should be in the affirmative, but that the questions themselves are of more than sufficient legal and practical importance, on a nationwide basis, that they warrant this Court addressing them. In doing so, the Court could resolve vital issues that it left open in Gonzales v. Raich, 545 U.S. 1, 125 S. Ct. 2195, 162 L.Ed. 2d 1 (2005).

The language of 21 USC 822 (c) plainly creates exceptions, exemptions from Federal requirements of registration for legal possession of the subject controlled substances. The government undeniably has the power to license the cultivation of marijuana. 28 C.F.R. sec. 0.100 (b) (1999); New Hampshire Hemp Council, Inc. v Marshall 203 F.3d 1 (1st Cir. 2000). And 21 USC 885 states that a license once granted shall not be withdrawn.

Petitioner has alleged and presented evidence that, and is entitled to an adjudication of whether, the Federal government, by issuing him a tax identification number and accepting his tax payments, has in fact done so in this case. If it has, it obviously should be enjoined from prosecuting him; and this rule of law should be made known to this entire country.

And if the Federal government has licensed Petitioner's activities, it follows almost by definition that the Supremacy Clause should prevent state or local governments from prosecuting those activities. By harassing Petitioner while allowing other marijuana dispensaries to operate in its territory under state law, without federal licensure, the city of Oakland was clearly depriving Petitioner of Equal Protection of the Laws, per his First Cause of Action in his Petition below. Squaw Valley Development Co. v. Goldberg, 375 F. 3d 936 (9th Cir. 2004).

Thus, contrary to the District Court's findings, Petitioner has stated one or more claims; and claims worthy even of this Court's consideration.

While it is true that Petitioner's opposition to the principal motion to dismiss was filed tardily, and that his filing in the Ninth Circuit fell far short of the formalities of a brief; Petitioner respectfully

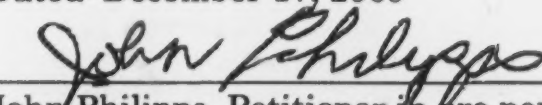
points out that he was and is (a) a pro per litigant, (b) suffering from a mental disability; as well as that (c) the District Court's ruling on the motion to dismiss reached (that Court's perception of) the merits, rendering it ripe for appeal on those merits regardless of the late filing; and (d) his filing with the Ninth Circuit served at least to identify the nature of his exceptions to the lower court's ruling and contentions on appeal, and thereby preserve the record sufficiently for this Court to address the issues raised. Ninth Circuit rules for Federal Judges Pg 11.2c(11.14) In exceptional circumstances, the court may order an immediate mandate. Issued February 19, 2009. Judges had no authority to deny re-hearing. Error mandate May 17, 2009.

It is submitted that under all these circumstances, the substantive nature and importance of the statutory issues and Constitutional rights involved should and do outweigh the technicalities, and warrant this Court's taking up the issues presented.

CONCLUSION

For all the reasons stated, I pray and respectfully move this Court to grant me a Writ of Certiorari.

Dated: December 17, 2009



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NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JOHN PHILLIPS, Plaintiff - Appellant, v. CITY OF OAKLAND, CALIFORNIA; et al., Defendants - Appellees.	No. 08-16498 D.C. No. 4:07-cv-03885-CW MEMORANDUM* (Filed January, 27 2009)

Appeal from the United States District Court for the Northern District of California
Claudia Wilken, District Judge, Presiding

Submitted January 20, 2009**

Before: O'SCANNLAIN, SILVERMAN and BYBEE, Circuit Judges.

Upon review of the record and appellant's response to this court's order to show cause, this court hereby summarily affirms the district court's final judgment.

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* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

MF/Pro Se

See United States v. Hooton, 693 F;2d 857 (9th Cir. 1982) (per curiam) (summary affirmance appropriate where result is clear from face of record).

AFFIRMED.

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

JOHN PHILIPPS Plaintiff, v. CITY OF OAKLAND; KAREN P. TANDY; SCOTT N. SCHOOLS; and ARNOLD SCHWARZENEGGER, Defendants.	No. C 07-3885 CW (Filed: December 14, 2007)

ORDER GRANTING CITY OF OAKLAND'S AND ARNOLD SCHWARZENEGGER'S MOTIONS TO DISMISS

Pro se Plaintiff John Phillips brings this action alleging violations' of his constitutional rights in connection with Defendants' refusal to allow him to operate a storefront marijuana dispensary.

Defendants City of Oakland and California Governor Arnold Schwarzenegger move separately to dismiss the claims against them.[1] In an order dated October 4, 2007, the Court informed Plaintiff that the deadline for filing his opposition to Defendants' motions was October 18, 2007, and that failure to file a timely opposition could result in the motions being granted.

Plaintiff did not file an opposition. The matter was taken under submission on the papers. Having considered the papers filed for Defendants, the Court grants their motions.

BACKGROUND

While the complaint is not clear on the factual details give rise to this lawsuit, Plaintiff alleges that he was criminally prosecuted by the State of California for running a storefront marijuana dispensary. He also maintains that the City of Oakland refuses to allow him to operate such a dispensary in downtown Oakland, even though he possesses a license from the federal government that permits him to grow and sell marijuana .

[1]Defendants Karen P. Tandy, the administrator of the U.S. Drug Enforcement Administration, and Scott N. Schools, the U.S. Attorney for the Northern District of California, have not yet appeared in this action. Any reference in this order to "Defendants" refers only to the City of Oakland and Gov. Schwarzenegger.

Plaintiff claims in his first and second causes of action the City of Oakland's acts violated his Fourteenth Amendment right to equal protection and due process.[2] He claims in his third cause of of action that the City of Oakland and Gov. Schwarzenegger violated the Supremacy Clause of the U.S. Constitution by not allowing him to run a storefront marijuana dispensary, in disregard of his federal license.

LEGAL STANDARD

A complaint must contain a "short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a). When considering a motion to dismiss under Rule 12(b) (6) for failure to state a claim, dismissal is appropriate only when the complaint does not give the defendant fair notice of a legally cognizable claim and the grounds on which it rests. See Bell Atl. Corp. v. Twombly, __ U.S. __, 127 S. Ct. 1955, 1964 (2007).

[2]Plaintiff's second cause of action is cast as a violation of his "right to earn a living." Because Plaintiff alleges no absence or failure of procedural safeguards in connection with his attempt to open a marijuana dispensary, the Court construes this cause of action to allege a substantive due process violation.

In considering whether the complaint is sufficient to state a claim, the court will take all material allegations as true and construe them in the light most favorable to the plaintiff. NL Indus., Inc. v. Kaplan, 792 F.2d 896, 898 (9th Cir. 1986). Although the court is generally confined to consideration of the allegations in the pleadings, when the complaint is accompanied by attached documents, such documents are deemed part of the complaint and may be considered in evaluating the merits of a Rule 12(b) (6) motion. Durning v. First Boston Corp., 815 F.2d 1265, 1267 (9th Cir. 1987).

When granting a motion to dismiss, the court is generally required to grant the plaintiff leave to amend, even if no request to amend the pleading was made, unless amendment would be futile. Cook, Perkiss & Liehe, Inc. v. N. Cal. Collection Serv. Inc., 911 F.2d 242, 246-47 (9th Cir. 1990). In determining whether amendment would be futile, the court examines whether the complaint could be amended to cure the defect requiring dismissal "without contradicting any of the allegations of [the] original complaint." Reddy v. Litton Indus., Inc., 912 F.2d 291, 296 (9th Cir. 1990). Leave to amend should be liberally granted, but an amended complaint cannot allege facts inconsistent with the challenged pleading. Id. at 296-97.

DISCUSSION

I. Fourteenth Amendment

Plaintiff claims that the City of Oakland's refusal to let him open a storefront marijuana dispensary violates the Equal Protection and Due Process Clauses of the Fourteenth Amendment. Because Plaintiff does not allege that he is a member of a protected class, he can succeed on his equal protection claim only by demonstrating that he "has been intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment." Squaw Valley Development Co. v. Goldberg, 375 F.3d 936, 944 (9th Cir. 2004) (quoting Vill. of Willowbrook v. Olech,528 U.S. 562, 564 (2000)). "Disparate government treatment will survive rational basis scrutiny 'as long as it bears a rational relation to a legitimate state interest.'" Id. (quoting Patel v. Penman, 103 F.3d 868, 875 (9th Cir. 1996)).

The allegations in the complaint do not establish that Plaintiff has been treated differently from similarly situated individuals, let alone in an irrational manner. To the extent Plaintiff's claim is based on the City treating him, as a proprietor of a medical marijuana dispensary, differently from businesspeople who sell other products, his claim must fail. Even though

California's Compassionate Use Act permits the personal use of marijuana for medical reasons, the commercial sale of medicinal marijuana is still illegal under California's criminal law. People ex rel. Lungren v. Peron, 59 Cal. App. 4th 1383, 1389-90(1997). The city of Oakland does permit dispensaries to sell marijuana for medical use, but it limits their number and location. Oakland Mun. Code § 5.80. The City has a legitimate interest in regulating the dispensaries in this way because such regulation may prevent their uncontrolled proliferation, which could pose a threat to public safety, and may ensure that the dispensaries comply with the provisions of the Compassionate Use Act. Cf. Wash. Mercantile Ass'n v. Williams, 733 F.2d 687, 691 (9th Cir. 1984) (government has a legitimate interest in regulating the sale of drug paraphernalia); United States v. Huss, 7 F.3d 1444, 1448 (9th Cir. 1993), overruled on other grounds, United States v . Sanchez-Rodriguez, 161 F.3d 556 (9th Cir. 1998) (government has a legitimate interest in regulating the use of firearms). The complaint alleges no facts suggesting that the City's permit scheme is an irrational means of regulating medical marijuana dispensaries.

As for Plaintiff's due process claim, he is correct that the rights conferred by the Fourteenth Amendment include "some generalized due process right to choose one's field of private employment." Conn v. Gabbert, 526

U.S. 286, 291-292 (1999). However, substantive due process does not provide an individual the unfettered right to earn a living in whatever way he or she desires. Rather, the right is "subject to reasonable government regulation. " Id. at 292. Substantive due process certainly does not entitle an individual to engage in a profession that is criminalized under both state and federal law. Accordingly, Plaintiff's substantive due process claim fails.

II. Supremacy Clause

Plaintiff claims that he possesses a federal license to grow and distribute marijuana and, therefore, the City of Oakland and the State of California have violated the Supremacy Clause of the U.S. Constitution by failing to allow him to operate his business. Marijuana is a Schedule I drug, the possession and distribution of which is a federal criminal offense. 21 U.S.C. §§ 841, 844, 812. The Court takes judicial notice of the fact that the United States government does not issue licenses to individuals who wish to grow and sell marijuana, for medical purposes or otherwise.[3] Because Defendants' actions are not inconsistent with federal law, there is, no basis for Plaintiff's Supremacy Clause claim.

[3]Plaintiff supports his contention that he possesses a federal license by reference to Exhibit A,to the complaint. Exhibit A, however, is nothing more than an IRS payment voucher.

CONCLUSION

For the foregoing reasons, the Court GRANTS Defendants' motions to dismiss the claims against them (Docket Nos. 11 and 12), and Plaintiff's first, second and third causes of action are hereby dismissed. The Court finds that any amendment of these claims would be futile because the facts on which they are based are fundamentally incompatible with a legal claim. Accordingly, these claims are dismissed with prejudice. The docket sheet does not reflect whether Defendants Tandy and Schools have been served with process. Plaintiff was required to serve these Defendants by November 27, 2007, within 120 days of filing the complaint. The Court will give Plaintiff until January 28, 2008 to serve these Defendants and file proof of such service with the Court. If he does not do so, the claims against them will be dismissed. Plaintiff is referred to Rule 4(i) of the Federal Rules of Civil Procedure for the requirements of service upon officers of the United States.

IT IS SO ORDERED.

Dated: 12/14/07

CLAUDIA WILKEN
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF
CALIFORNIA

JOHN PHILLIPS Plaintiff v. CITY OF OAKLAND; KAREN P. TANDY; SCOTT N. SCHOOLS; and ARNOLD SCHWARZENEGGER, Defendants.	No. C 07-03885 CW JUDGEMENT

For the reasons set forth in this Court's Order Granting Federal Defendants Motion to Dismiss, IT IS ORDERED AND ADJUDGED
That Plaintiff John Phillips take nothing, that the action be dismissed on the merits, and that each party bear its own costs of action.

Dated at Oakland, California, this 28th day of April, 2008.

RICHARD W. WIEKING
Clerk of Court

By:
SHEILAH CAHILL
Deputy Clerk

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JOHN PHILLIPS, Plaintiff - Appellant, v. CITY OF OAKLAND, CALIFORNIA; et al.. Defendants -Appellees.	No. 08-16498 ORDER (Filed July 20, 2009)

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NORTHERN CALIFORNIA, Oakland (D.C. No. 4:07-cv-03885-CW)

Before: O'SCANNLAIN, SILVERMAN and BYBEE, Circuit Judges.

The panel has voted to deny the petition for panel rehearing. See Fed. R. App. P. 40.

The full court has been advised of the petition for rehearing en banc, and no judge has requested a vote on whether to rehear the matter en banco See Fed. R.

App. P. 35.

The petition for panel rehearing and the petition for rehearing en banc are denied.

MF/Pro Se

The motion to recall the mandate is denied as unnecessary because the mandate was recalled as issued in error. The mandate shall re-issue in due course.

No further filings shall be accepted in this closed case.

MF/Pro se 08-16498

159

(3)

No. 09-738

In The
Supreme Court of the United States

JOHN PHILIPPS,

Petitioner,

v.

CITY OF OAKLAND, CALIFORNIA
KAREN P. TANDY, Administrator, U.S. DEA
SCOTT N. SCHOOLS, U.S. Attorney, CAN
ARNOLD SCHWARZENEGGER,
Governor of the State of California,

Respondents.

On Petition for a Writ of Certiorari
To The United States Court of Appeals For The
Ninth Circuit

SEPARATE APPENDIX,
SUPPLEMENTAL BRIEF

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FEB

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Dated Feb 17th, 2010

John Philips

John Philips, Petitioner pro se

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ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address)	TELEPHONE NO.	FOR COURT USE ONLY
John Phillips 2337 Ransom Avenue Oakland, CA 94601	(510) 261-7821	Page 1
ATTORNEY FOR (Name):	Ref. No. or File No.	
Insert name of court, judicial district or branch court, if any: United States District Court Northern District 450 Golden Gate Ave. San Francisco, CA 94102-0000		
PLAINTIFF: Phillips		
DEFENDANT: City of Oakland, et al		

PROOF OF HAND DELIVERY	DATE:	TIME:	DEPT/DIV:	CASE NUMBER: C07-03885

At the time of service I was at least 18 years of age and not a party to this action, and I served:

Petitioner's Objection To Respondant City of Oakland's Motion To Dismiss; Memorandum of Law in Support of Petitioner's Objection to Respondent City of Oakland's Motion to Dismiss; Certificate of Service; Exhibits (6)

LAW OFFICES OF: Scott N. Schools, US Attorney

DELIVERED TO: Elsie Soto - Civil Process Clerk

DATE & TIME OF DELIVERY: September 27, 2007
11:17 am

ADDRESS, CITY, AND STATE: 450 Golden Gate Ave., 9th Floor
San Francisco, CA

MANNER OF SERVICE:

Delivery to Law Office. Service was made by delivery to the attorney's office; or by leaving the document(s) with his clerk over the age of 18 therein; or with a person having charge thereof, or if there was no such person in the office, by leaving them between the hours of 9:00 AM and 5:00 PM, in a conspicuous place at the law office(s). (CCP §1011(1))

Fee for Service: $85.00

Registered California process server
County: Contra Costa
Registration No.: 632
Expiration: February 16, 2008
PROFESSIONAL PROCESS SERVICE
936 Dewing Ave., Ste. E-1
Lafayette, CA 94549

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on September 27, 2007 at Lafayette, California.

Signature: Jeanne M. Kosta
Jeanne M. Kosta

Evid C §647, CCP §1013 5(b)(4)

07-4F9038P

BEST AVAILABLE COPY

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

JOHN PHILLIPS,

Plaintiff,

v.

CITY OF OAKLAND, et al.,

Defendants.

/

No. C 07-03885 CW

CLERK'S NOTICE TAKING MOTION UNDER SUBMISSION

MAR-4 2008

On January 31, 2008, Federal Defendants filed a Motion to Dismiss. Plaintiff's opposition to the motion was due February 21, 2006. Plaintiff has not filed any opposition to the motion. Accordingly,

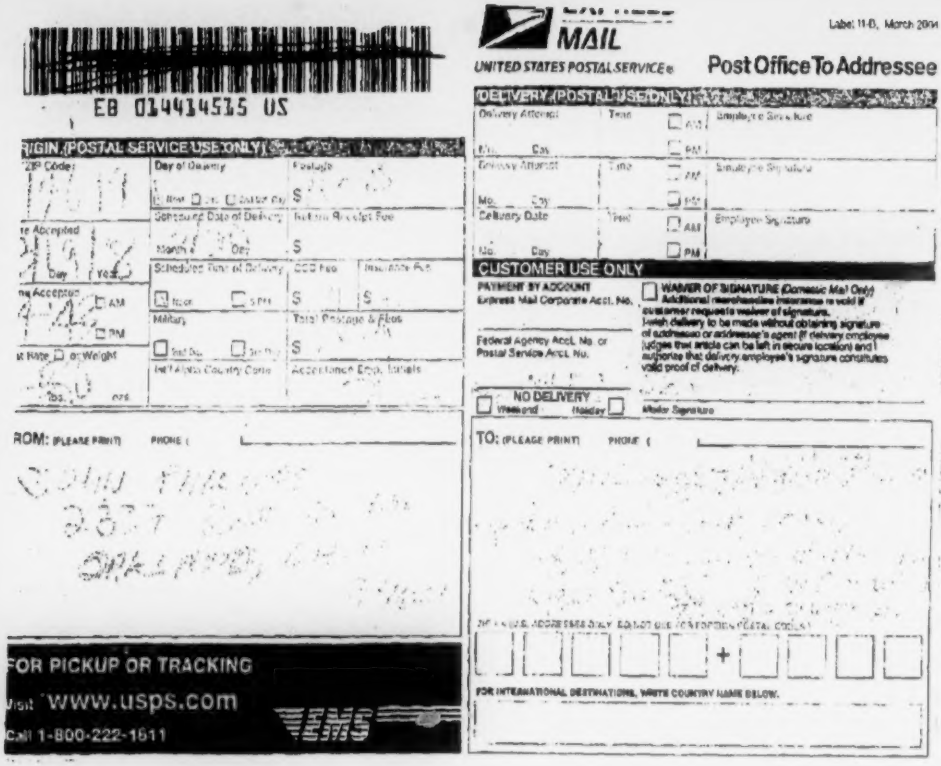
Notice is hereby given that the Court, on its own motion, shall take the Federal Defendants' Motion to Dismiss under submission on the papers. The hearing previously scheduled for March 13, 2008, is vacated. Plaintiff will have until March 20, 2008, to file written opposition to the motion; any reply by the Federal Defendants will be due March 27, 2008. **Failure by Plaintiff to timely file an opposition to the motion may result in the granting of the motion.**

Dated: 3/4/08

Sheilah Cahill

SHEILAH CAHILL
Deputy Clerk

United States District Court
For the Northern District of California



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CUSTOMER USE ONLY

PAYMENT BY ACCOUNT
Express Mail Corporate Acct. No.

Federal Agency Acct. No. or Postal Service Acct. No.

WAIVER OF SIGNATURE (Domestic Mail Only)
Additional merchandise insurance is void if customer requests waiver of signature. I wish delivery to be made without obtaining signature of addressee or addressee's agent (if delivery employee judges that article can be left in secure location) and I authorize that delivery employee's signature constitutes valid proof of delivery.

NO DELIVERY
Weekend Holiday

Waiver Signature

FROM: (PLEASE PRINT) PHONE ( )

TO: (PLEASE PRINT) PHONE ( )

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Visit www.usps.com
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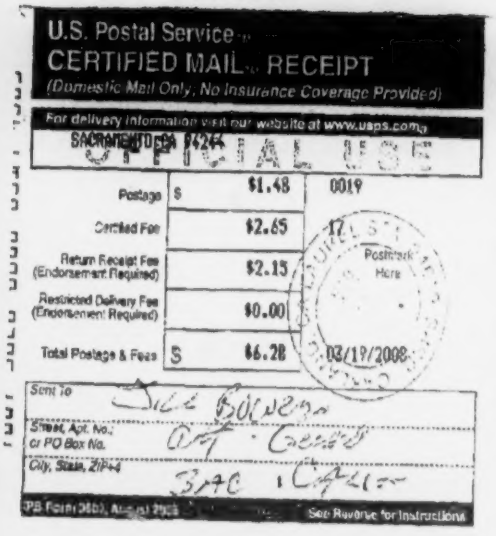
FOR INTERNATIONAL DESTINATIONS, WRITE COUNTRY NAME BELOW.



U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
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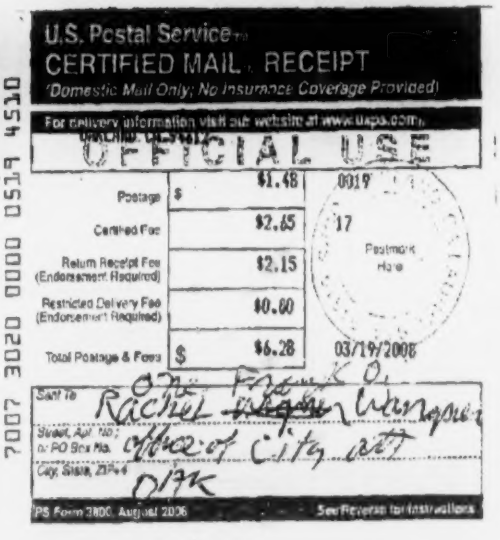
For delivery information visit our website at www.usps.com®

OFFICIAL USE

Postage	$ $1.48	0019
Certified Fee	$2.65	17
Return Receipt Fee (Endorsement Required)	$2.15	Postmark Here
Restricted Delivery Fee (Endorsement Required)	$0.00	
Total Postage & Fees	$ $6.28	03/19/2008

Sent To
Street, Apt. No.; or PO Box No.
City, State, ZIP+4

PS Form 3800, August 2006 — See Reverse for Instructions



U.S. Postal Service™
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Sent To
Street, Apt. No.; or PO Box No.
City, State, ZIP+4

PS Form 3800, August 2006 — See Reverse for Instructions

7007 3020 0000 0519 4510

D.E.A.

LAUREL POST OFFICE
OAKLAND, California
946199991
0555110019 -0095
9/29/2007 (800)275-8777 01:35:48 PM

Sales Receipt

Product Description	Sale Qty	Unit Price	Final Price
ALEXANDRIA VA 22301			$4.60
Zone-6 Priority Mail			
Flat Rate Env			
1 lb. 13.00 oz.			
Return Rcpt (Green Card)			$2.15
Certified			$2.65
Label #:	70041160000619567546		
Issue PVI			-$9.40
SACRAMENTO CA 94244			$4.60
Zone-2 Priority Mail			
Flat Rate Env			
1 lb. 13.10 oz.			
Return Rcpt (Green Card)			$2.15
Certified			$2.65
Label #:	70041160000619567577		
Issue PVI:			$9.40
Total:			$18.80
Paid by:			
Cash			$20.00
Change Due:			-$1.20

Order stamps at USPS.com/shop or call 1-800-Stamp24. Go to USPS.com/clickship to print shipping labels with postage. For other information call 1-800-ASK-USPS.

Bill#: 1000500701619
Clerk: 17

All sales final on stamps and postage
Refunds for guaranteed services only
Thank you for your business.

HELP US SERVE YOU BETTER

Go to: http://gx.gallup.com/pos

TELL US ABOUT YOUR RECENT POSTAL EXPERIENCE

YOUR OPINION COUNTS

Customer Copy

LAUREL POST OFFICE
OAKLAND, California
946199991
0555110019 -0095
03/19/2008 (800)275-8777 04:47:02 PM

Sales Receipt

Product Description	Sale Qty	Unit Price	Final Price
SAN FRANCISCO CA 94102			$16.25
Zone-1 Express Mail			
PO-Add			
5.50 oz.			
Label #:	EB014414515US		
Next Day Noon / Normal Delivery			
Issue PVI:			$16.25
SACRAMENTO CA 94244			$1.48
Zone-2 First-Class			
Large Env			
4.10 oz.			
Return Rcpt (Green Card)			$2.15
Certified			$2.65
Label #:	70073020000005194503		
Customer Postage			-$0.41
Issue PVI:			$5.87
OAKLAND CA 94612 Zone-0			$1.48
First-Class Large Env			
4.10 oz.			
Return Rcpt (Green Card)			$2.15
Certified			$2.65
Label #:	70073020000005194510		
Customer Postage			-$0.41
Issue PVI:			$5.87
Total:			$27.99
Paid by:			
Cash			$28.00
Change Due:			-$0.01

Order stamps at USPS.com/shop or call 1-800-Stamp24. Go to USPS.com/clickship to print shipping labels with postage. For other information call 1-800-ASK-USPS.

Bill#: 1000500829840
Clerk: 17

All sales final on stamps and postage.
Refunds for guaranteed services only.
Thank you for your business.

HELP US SERVE YOU BETTER

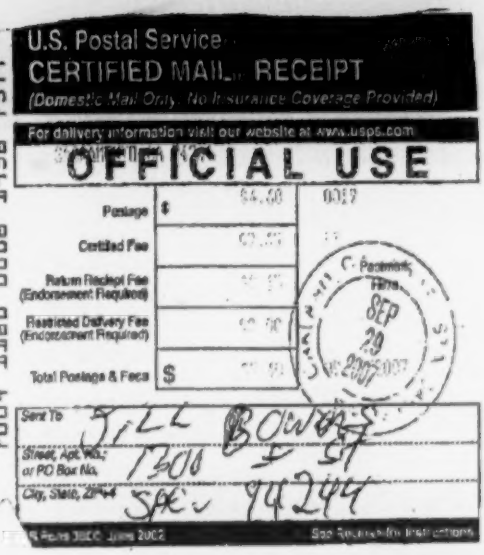
Go to: http://gx.gallup.com/pos

TELL US ABOUT YOUR RECENT POSTAL EXPERIENCE

YOUR OPINION COUNTS

Customer Copy

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)
For delivery information visit our website at www.usps.com
OFFICIAL USE
Postage $4.60
Certified Fee $2.65
Return Receipt Fee (Endorsement Required) $2.10
Restricted Delivery Fee (Endorsement Required) $0.00
Total Postage & Fees $9.40
Sent To Koren Tanda D.E.A.
Street, Apt. No.; or PO Box No. 2401 Jefferson St
City, State, ZIP+4
7004 1160 0006 1956 7546


U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)
For delivery information visit our website at www.usps.com
OFFICIAL USE
Postage $4.60
Certified Fee
Return Receipt Fee (Endorsement Required)
Restricted Delivery Fee (Endorsement Required)
Total Postage & Fees $
Sent To JILL BOWER
Street, Apt. No.; or PO Box No. 1301 F St
City, State, ZIP+4 Sac. 94244
7004 1160 0006 1956 7577

BOE-502-AH(FRONT) REV.4 (8/02)

OFFICE OF ASSESSOR
COUNTY OF ALAMEDA
ADMINISTRATION BUILDING, ROOM 145, 1221 OAK STREET
OAKLAND, CALIFORNIA 94612-4288
(510) 272-3787 / FAX (510) 272-3803
RON THOMSEN
ASSESSOR

ASSESSOR'S USE ONLY
N.S.P.:
C.E.:
REC'D
BY:
DATE:

CHANGE IN OWNERSHIP STATEMENT
REAL PROPERTY OR MANUFACTURED HOMES SUBJECT TO LOCAL PROPERTY TAXES

FILE THIS STATEMENT BY:
EVENT DATE: May 7, 1993 NO.: 1993 -152738

PHILIPPS JOHN C
2337 RANSOM AVE
OAKLAND, CA 94601-3827

APN: 38-3179-9
LOCATION: 5540 FOOTHILL BLVD, OAKLAND, CA 94605-1029

2002-2003
For Fiscal Year Beginning July 1, 2002 and Ending June 30, 2003

ALAMEDA COUNTY
SECURED PROPERTY TAX STATEMENT
Donald R. White, Treasurer and Tax Collector
1221 Oak Street
Oakland, California 94612-4285

Pacific Gas and Electric Company

Parcel Number	Tracer Number	Tax-Rate Area	Special Handling
32-2100-46	063968	17-001	TRANSAMERIC11

Location of Property
2335 RANSOM AV
Assessed to on January 1, 2002
WOLFORD ROGER & PHILIPPS JOHN

WOLFORD ROGER & PHILIPPS JOHN
2337 RANSOM AV
OAKLAND CA 94601-3627

Tax-Rate Breakdown		
Taxing Agency	Tax Rate	Tax Amount
COUNTYWIDE TAX	1.0000%	1,880.31
VOTER APPROVED DEBT SERVICE		
CITY OF OAKLAND 1	.1897%	356.70
SCHOOL UNIFIED	.0818%	153.81
SCHOOL COMM COLL	.0176%	33.09
EAST BAY REGIONAL PARK	.0065%	12.22
EBMUD SPEC DIST 1	.0084%	15.79

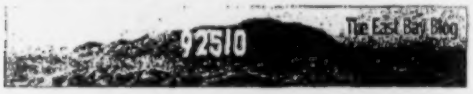
July 13, 1998

Final Notice

Roger Wilford
John C. Philipps
2335 Ransom Avenue #A
Oakland, CA 94601-3875

Re: 5540 Foothill Boulevard, Oakland, CA 9460
Account No. LJL-07-22705

Dear Roger Wilford and John C. Philipps:



Four Oakland Cops Fired

CRIME / PEOPLE / POLITICS Robert Gammon – Tue, Apr 25, 2009 at 11:50 AM

Four of the eleven Oakland cops caught up in the search warrant scandal were **fired**, according to the *Trib*. The other seven **have returned** to the force. The *Trib*, citing anonymous sources, identified the four cops who lost their jobs as Karla Rush, Francisco Martinez, John Kelly and William Burke. The four applied on search warrants, swearing under oath that drugs had been tested by the police department's crime lab when they had not. The bogus warrants have resulted in the dismissal of at least sixteen criminal cases. The cops also are believed to have lied to the department's internal affairs division. An attorney for the cops says they got no training. But how much training do you need to tell the truth?

"Fruits of the poisonous tree"

Officer Rush was arresting officer in case #505113A and B and also a witness.

FORM NO. 214-170-4042 REV 4/03

SUPPLEMENTAL

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA
WILEY W. MANUEL COURTHOUSE

CLERKS DOCKET AND MINUTES

1. DEPT 114 DATE 04-06-05 CEN 4299583

2. NAME Rodriguez, John C. DOCK NO 505113A

WITNESSES

SWORN AND TESTIFIED ON BEHALF OF THE PEOPLE:	SWORN AND TESTIFIED ON BEHALF OF THE DEFENDANT:
1. Karla Rush OPD	Roger Stephen Ellis 84

Q. So let me represent to you that Officer Rush previously testified there were 45 of those potted plants in the basement area at 2337 Ransom Avenue and indicate to you that if you subtracted those 45 plants from the total 166 plant count that was in that area, that would leave 121 as opposed to 166 plants.

A. Okay.

Q. Hypothetically speaking, would 121 plants in the conditions that you've seen all of the plants -- not just the tall ones budding, but also the shorter ones that you couldn't see buds -- would that be too much marijuana for two people to possess for personal use as qualified patients?

LESLIE YARBROUGH, CSR #12067

Dept. No. 112
12/21 I/C

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA
WILEY W. MANUEL COURTHOUSE

PEOPLE OF THE STATE OF CALIFORNIA	NO. 505113A,B COMPLAINT
v.	149732
JOHN C PHILLIPS	PFN: BAM042 CEN: 4299583
DAVID CLANCY	PFN: BCG475 CEN: 4299588
Defendant(s).	

The Undersigned, being sworn says, on Information and belief, that JOHN C PHILLIPS and DAVID CLANCY did, in the County of Alameda, State of California, on or about December 17, 2004, commit a Felony, to wit: CULTIVATING MARIJUANA, a violation of section 11358 of the HEALTH AND SAFETY CODE of California, in that said defendant(s) did unlawfully plant, cultivate, harvest, dry, and process marijuana.

"NOTICE: Conviction of this offense will require you to register pursuant to Health and Safety Code section 11590. Failure to do so is a crime pursuant to Health and Safety Code section 11594."

SECOND COUNT

The Undersigned further deposes and says on Information and belief, that said DAVID CLANCY and JOHN C PHILLIPS did, in the County of Alameda, State of California, on or about December 17, 2004, commit a Felony, to wit: POSSESSION OF MARIJUANA FOR SALE, a violation of section 11359 of the HEALTH AND SAFETY CODE of California, in that said defendant(s) did unlawfully possess for purpose of sale, to wit: marijuana.

"NOTICE: Conviction of this offense will require you to register pursuant to Health and Safety Code section 11590. Failure to do so is a crime pursuant to Health and Safety Code section 11594."

FIRST PRIOR CONVICTION AS TO DEFENDANT PHILLIPS

The undersigned further alleges that before the commission of the offense specified above, said defendant JOHN C PHILLIPS, on or about April 19, 2004, was convicted in the Superior Court of the State of California, in and for the County of ALAMEDA, of the crime of a Felony, to wit: POSSESSION OF CONCENTRATED CANNABIS, a violation of section 11357(a) of the HEALTH AND SAFETY CODE of California, and received a sentence of probation therefor.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA STREET ADDRESS: 1225 FALLON STREET MAILING ADDRESS: CITY AND ZIP CODE: OAKLAND, CA 94612 BRANCH NAME: NORTHERN	FOR COURT USE ONLY
PEOPLE OF THE STATE OF CALIFORNIA vs. DEFENDANT: John C. Phillips	
FINGERPRINT FORM	CASE NUMBER: 149732

INSTRUCTIONS

Immediately following arraignment in superior court of a defendant charged with a felony or arraignment of a defendant by a municipal court judge sitting as a superior court judge, the court shall require the defendant to provide a right thumbprint on this form. In the event the defendant is convicted, this form shall be attached to the minute order reflecting the defendant's sentence and shall be permanently maintained in the court file. Please see Penal Code section 992 for further information, including when the defendant is physically unable to give a right thumbprint.

For a proper imprint and durable record, this form should be printed on paper that meets California Department of Justice specifications: a 99 pound white tab card or 100 pound white tab stock 0.0070 inch thick (0.0066 through 0.0074 inch is acceptable). Paper smoothness should be 100–140 sheffield units. The form should be printed with the grain left to right.

FRAUD y PRINT

1. The box to the right contains the defendant's
   - [X] right thumbprint
   - [ ] other print *(specify)*:

John Phillips
Thumb PRINT
2/17/10

2. The print was taken on *(date)*:
   04200S

3. The print was taken by
   a. Name: V. Ibarra
   b. Position: Bailiff
   c. Badge or serial No.: 1343

2/17/10

Both Palms
Thumb Print

COPY

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

BEFORE THE HONORABLE TRINA THOMPSON STANLEY, JUDGE

DEPARTMENT NO. 114

---oOo---

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff; Vs. (A) JOHN C. PHILLIPS, (B) DAVID DAMON CLANCY, Defendants.	No. 505113A 505113B

REPORTER'S TRANSCRIPT OF PROCEEDINGS

PRELIMINARY EXAMINATION

WILEY W. MANUEL COURTHOUSE
OAKLAND, CALIFORNIA

TUESDAY, APRIL 5, 2005
VOLUME 2

LESLIE YARBROUGH, CSR #12067

For the People:
CHRIS INFANTE
Deputy District Attorney

For Defendant A:
CLIFFORD LANCASTER
Attorney at Law

For Defendant B:
MICHAEL R. KILTS
Attorney at Law

[redacted]

CALIFORNIA DEPARTMENT OF MOTOR VEHICLES
CUSTOMER RECEIPT COPY
DRIVER LICENSE/IDENTIFICATION CARD
INFORMATION REQUEST
06/04/93

D#[illegible]
DATE:06-04-93*TIME:15:23:
DL/NO:R0169588*
B/D:07-30-49*NAME:PHILIPPS,JOHN CARL*
RES ADD AS OF 07-29-88:2037 RAMSON AV. OAKLAND [illegible]
OTH ADD AS OF 06-22-84:2037 RAMSON AV. OAKLAND [illegible]
IDENTIFYING INFORMATION:
SEX:MALE*HAIR:BROWN*EYES:HAZEL*HGT:5-11*WGT:190*

[illegible]

NONE*

JV-054

8581

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA

☐ Allen E. Broussard Justice Center 600 Washington Street, Oakland, CA 94607	☐ Berkeley Courthouse 2000 Center Street, Berkeley, CA 94704	☐ Berkeley Courthouse 2120 Martin Luther King, Jr. Way, Berkeley 94704
☐ Fremont Hall of Justice 39439 Paseo Padre Parkway, Fremont, CA 94538	☐ Gale/Schenone Hall of Justice 5672 Stoneridge Drive, Pleasanton, CA 94588	☐ George E. McDonald Hall of Justice 2233 Shoreline Drive, Alameda, CA 94501
☐ Hayward Hall of Justice 24405 Amador Street, Hayward, CA 94544	☐ René C. Davidson Courthouse 1225 Fallon Street, Oakland, CA 94612	☑ Wiley W. Manuel Courthouse 661 Washington Street, Oakland, CA 94607

THE PEOPLE OF THE STATE OF CALIFORNIA

vs. 147115

Phillips, John
Defendant

Case No.: 488924 A
PFN: BAM042
CEN: 3263651

CERTIFICATE OF MAGISTRATE AND COMMITMENT

The attached complaint was filed in this court and a copy delivered to the above-named defendant.

I hereby certify that after the filing of the attached complaint the herein named defendant John Phillips appeared before me in open court and was duly arraigned; and thereafter defendant appeared before me represented by counsel, to wit: Cliff Lavigne at which time with my consent and the consent of the District Attorney, the defendant in the presence of counsel, pleaded guilty/nolo contendere to the felony offense(s) to wit: A violation of section 11357(a) of the Health and Safety Code of the State of California

☐ defendant admitted having suffered the _____ prior convictions.

I therefore certify this case to the Superior Court of the State of California, in and for the County of Alameda, and order the defendant to appear in Department Number 11 on 4-19-04 at 8:31 am and further refer this matter to the Probation Department for a report.

☐ It is orally stipulated that defendant waives the 5 day requirement for filing of Probation Report before sentencing.

☐ The Sheriff of the County of Alameda, if the defendant is not now on bail, is commanded to receive the defendant into custody and to detain the defendant until legally discharged. Defendant may be admitted to bail (including penalty assessment) in the sum of $ _____.

☑ The defendant is to be continued on: ☐ O.R. ☑ BB $ 20,000.00 Bond No. _____
☐ Cash Bail $ _____.00 Check No. _____

Dated: 3-8-04

Charles D. Smith
JUDGE OF THE SUPERIOR COURT

FILED
ALAMEDA COUNTY

MAR 1 5 2004

CLERK OF THE SUPERIOR COURT
By _____

Original: Felony Unit
Copy: Originating Court File
Copy: Sheriff or Defendant

IN THE SUPERIOR COURT OF THE OAKLAND JUDICIAL DISTRICT
COUNTY OF ALAMEDA, STATE OF CALIFORNIA

STATE OF CALIFORNIA

COUNTY OF ALAMEDA

AFFIDAVIT FOR SEARCH WARRANT

Register No.

Arrest No.

Special Agent Brian Nehring of the Drug Enforcement Administration, being sworn, says: that there is probable and reasonable cause to believe, and I do believe, that there is now on and in the premises, structures, rooms, receptacles and safes situated at:

2335 Ransom Avenue, Oakland, California, described as a single-family, free-standing, two-story residence, light orange in color, with white colored trim, with a red composition roof, with the front door of the residence facing west and being white in color, with a covered carport area to the left of the front door and with the numerals 2335 in white clearly affixed vertically to the front of the residence. Including any and all outbuildings, storage areas or sheds located in the enclosed yard to the rear of the structure.

certain property, things and evidence, listed in ATTACHMENT "A"

Your affiant says that there is probable and reasonable cause to believe and that he does believe that said property constitutes: (Check applicable boxes)

[ ] stolen or embezzled property and

[X] property or things used as the means of committing a felony and

[X] property or things in the possession of a person with the intent to use it as a means of committing a public offense, or in the possession of another to whom he may have delivered it for the purpose of concealing it or preventing it's being discovered and

[X] property or things which consist of an item or constitutes evidence which tends to show that a felony has been committed, or tends to show that a particular person has committed a felony and

[ ] property or things which consist of an item or constitutes evidence which tends to show that sexual exploitation of a child, in violation of P.C. Section 311.3, has occurred or is occurring

charges had been filed. The CS subsequently directed me to the residence located at 2335 Ransom Avenue, Oakland, CA and stated that this was the building in which PHILIPPS lived and that it was all one residence inhabited by PHILIPPS alone. I and S/A Cole noted during this and subsequent observations of this structure that the numerals 2335 are the only numbers visible on the structure from the street and that it appeared that there was only one front door to the structure.

The CS provided me with a home telephone number of (510) 261-7821 for PHILIPPS.

Subsequent inquiries with the DMV revealed record of a John PHILIPPS (CDL #R0169588) providing a most recent residence address of 2337 Ransom Avenue, Oakland, CA as of December 26, 2000.

Inquiries with the National Comprehensive Report Database revealed that John C. PHILIPPS and Roger WOLFORD were the owners of the structure located at 2335 Ransom Avenue, Oakland, CA, described in these records as a "triplex (any combination)". I also noted that the records reflected that although the entire site structure was listed as 2335 Ransom Avenue, the mailing address for PHILLIPS and WOLFORD was listed as 2337 Ransom Avenue. I further noted from my training and experience that narcotics traffickers will often attempt to thwart law enforcement investigations by confusing property records by listing multiple addresses for a single property or mislabeling properties. Inquiries with the DMV revealed that over the years WOLFORD and PHILIPPS have registered vehicles at both 2335 and 2337 Ransom Avenue, Oakland, CA at various times. I also noted the fact that although the residence is listed on property records as 2335 Ransom Avenue, Oakland, CA both PHILIPPS and WOLFORD receive mail at 2337 Ransom Avenue, Oakland, CA. Subsequent inquiries with the Nationwide Telephone Search Index revealed that home telephone number 510-261-7821 provided by the CS is currently listed in the name of John PHILIPPS at 2337 Ransom Ave., Oakland, CA 94601. However, records reflect that this is the only telephone service at this structure and I noted that the CS had stated that PHILIPPS utilized both the upstairs and the downstairs as a single residence.

DOJ records revealed that PHILIPPS was arrested by the Oakland Police Department on September 21,1998, for violation of the California Health and Safety Code Section 11358, Cultivation of Marijuana, and H&S 11359, Possession of Marijuana for Sale. No adjudication was available. I subsequently obtained Oakland Police Department report #98-088588 regarding the arrest of PHILIPPS. I learned that Oakland Police Department Officers had received information that PHILIPPS was operating a marijuana grow and selling marijuana from his house. Officers subsequently obtained and executed a search warrant at PHILIPP's residence listed at that time as 2337 Ransom Ave., Oakland, California. I noted that currently, as of the writing of this affidavit, the numbers 2337 are not visible on any building or structure anywhere on Ransom Avenue.

At the time of the search warrant execution, PHILIPPS was the only individual at the residence, which matched the description of the building on Ransom Avenue currently bearing only the numbers 2335. In a rear room of the main residence, Officers located

CALIFORNIA FAIR PLAN ASSOCIATION

3435 Wilshire Blvd., Suite 1200
Los Angeles, CA 90010
Mail: P.O. Box 76924, Los Angeles, CA 90076-0924
TEL. (213)487-0111

NOTICE OF CANCELLATION
OF DWELLING FIRE POLICY

POLICY NUMBER: CFP 1160257 00
EFFECTIVE DATE: 11/17/95
EXPIRATION DATE: 11/17/96

CANCELLATION TO TAKE EFFECT AT 12:01 A.M. 03/10/96
DATE OF THIS NOTICE: 01/30/96

INSURED	PRODUCER
JOHN PHILLIPS AND ROGER WALFORD 2335 RANSOM AVENUE #A OAKLAND, CA 94601	5991490 RUUD, HOWARD D. INS. AGCY. INC 5956 MAC ARTHUR BOULEVARD OAKLAND, CA 94605

TO ALL INSURED(S), MORTAGEES, AND LOSS PAYEES NAMED IN SAID POLICY; THIS IS A NOTICE OF CANCELLATION OF INSURANCE POLICY.

SAID POLICY IN ITS ENTIRETY, INCLUDING ANY MORTGAGEE OR LOSS PAYABLE CLAUSE, IS HEREBY CANCELLED AS TO ALL INTERESTS INSURED.
EXCESS (IF ANY) OF PAID PREMIUM OVER THE PRO RATA PREMIUM FOR THE EXPIRED TIME WILL BE REFUNDED WITHIN A REASONABLE TIME AFTER THE EFFECTIVE DATE OF CANCELLATION. DEMAND IS HEREBY MADE FOR RETURN OF THE POLICY, AND FOR PAYMENT OF EARNED PREMIUM IF NOT ALREADY PAID.
IF THIS POLICY IS BEING CANCELLED FOR NON PAYMENT OF PREMIUM, PAYMENTS OF ALL AMOUNTS DUE MUST BE RECEIVED IN THE CALIFORNIA FAIR PLAN OFFICE BY THE EFFECTIVE DATE OF CANCELLATION SHOWN ABOVE.

REASON FOR CANCELLATION -- DISCOVERY OF FRAUD OR MATERIAL MISREPRESENTATION IN OBTAINING THE POLICY OR IN THE PRESENTATION OF A CLAIM THEREUNDER.

SECTION IX - RIGHT OF APPEAL: ANY APPLICANT OR INSURER SHALL HAVE THE RIGHT OF APPEAL TO THE GOVERNING COMMITTEE. A DECISION OF THE COMMITTEE MAY BE APPEALED TO THE INSURANCE COMMISSIONER WITHIN THIRTY (30) DAYS OF THE ACTION OR DECISION OF THE COMMITTEE. (SEE PROCEDURE ENCLOSED).

PROPERTY IS 100% VACANT WITH UNREPAIRED EARTHQUAKE DAMAGE, SEE COPY OF REPORT (CANC. EFF. DATE 03-10-96)

SEND TO

5991490
JOHN PHILLIPS
AND ROGER WALFORD
2335 RANSOM AVENUE #A
OAKLAND, CA 94601

CALIFORNIA FAIR PLAN

OFPCAN1 (6/93)

INSUREDS COPY

PACIFIC BELL.
A Pacific Telesis Company

Residence Service Flat Rate
Account Number
510 261-7821 328 N 9167

Statement Date
Apr 14, 1993

JOHN PHILIPPS
2337 RANSOM AV
REAR
OAKLAND CA
94601

Page 1

Previous Charges	Amount of last bill			160.65
	Payment(s).			.00
	Unpaid Balance. *See Disconnect Notice on Prior Page*			**160.65**
Current Charges	Pacific Bell	Page	2	65.67
	AT&T	Page	6	18.22
	Operator Assistance Network	Page	8	20.42
	Current Charges Total Due By May 14, 1993			**105.31**
Total Due				$265.96

LATE CHARGE REMINDER. A late charge may apply on May 18 if your payment has not been received. Your bill, however, must still be paid before the DUE BY date to avoid any other penalties (See Reverse)

Whom to Call		
	Pacific Bell - payment arrangements and billing questions:	*800-773-9977*
	Pacific Bell - adding, changing or disconnecting service:	*800-773-2355*
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PLEASE DETACH AND RETURN THIS PORTION WITH YOUR PAYMENT

Account Number	Statement Date	Payment Due	Total Due
510 261 7821 328 167 N 9	Apr 14, 1993	May 14, 1993	$265.96

Enter Amount Paid > > >
$ ☐☐☐.☐☐

Make Check Payable to Pacific Bell.

EB/CK 2 DZ. **CR04

JOHN PHILIPPS
2337 RANSOM AV
REAR
OAKLAND CA 94601

PACIFIC BELL
PAYMENT CENTER
SAC CA 95887 0001

106 2617821 328 510 167

16065 120 87074 26596

NANCY E. O'MALLEY, DISTRICT ATTORNEY

COUNTY OF ALAMEDA, STATE OF CALIFORNIA

SUBPOENA

To: PAULETTE AVEAU
2335 RANSOM AVENUE, APT. A
OAKLAND CA 94601

You are commanded to appear in Department 011 of the Superior Court at the RENE C. DAVIDSON COURTHOUSE, 1225 Fallon Street, Oakland on **02/25/2010** at 1:00 PM, in the matter of:

People of the State of California

Docket # 80-157700
Police Report # 09-069685
Calendar Event HGARP

v.

RAMON GALIKI AVEAU
Defendant(s)

Before going to Department 011 please go to the District Attorney's Office on the 9th floor

NANCY E. O'MALLEY, DISTRICT ATTORNEY

COUNTY OF ALAMEDA, STATE OF CALIFORNIA

SUBPOENA

To: JOHN PHILLIPS
2337 RANSOM AVENUE
OAKLAND CA 94601

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v.

RAMON GALIKI AVEAU

RAMON GALIKI AVEAU

Supreme Court, U.S.
FILED
JAN 21 2010
OFFICE OF THE CLERK

No. 09-738

In The Supreme Court of the United States

JOHN PHILIPPS,

Petitioner,

v.

CITY OF OAKLAND, CALIFORNIA
KAREN P. TANDY, Administrator, U.S. DEA
SCOTT N. SCHOOLS, U.S. Attorney, CAN
ARNOLD SCHWARZENEGGER,
Governor of the State of California,

Respondents.

On Petition for a Writ of Certiorari To The United States Court of Appeals For The Ninth Circuit

SEPARATE APPENDIX, SUPPLEMENTAL BRIEF

John Philipps
2337 Ransom Avenue
Oakland, CA 94601-3827
(510) 261-7821, (510) 575-4782
Petitioner in pro se

SUPPLEMENTAL BRIEF OF PETITIONER

Pursuant to Supreme Court Rule 15.8, I, the petitioner, am submitting this supplemental brief to call attention to newly found evidence not available at the time of my last filing.

On December 14, 2007 the City of Oakland's and Arnold Schwarzenegger's requested Motions to Dismiss were granted in The United States District Court for the Northern District of California (No. C 07-3885 CW). The order states that I failed to file an Objection to the Defendants' Motions to Dismiss by the deadline of 10-18-07 order of the court.

I have been at a disadvantage in these proceedings partly due to my pro se status, also due to my medical condition. I have been diagnosed with Depression and Post Traumatic Stress Disorder which I take medication for (See Patent Documents in Separate Appendix pgs. 3, 40). My disability is the reason I did not initially question the Court's order granting Defendants' Motions to Dismiss. I, and all Americans rely on the Judicial system to be true, and just in its rulings.

While sorting through some documents in storage, I discovered that I had in fact filed and

sent copies of my Objections to the Motions to Dismiss to the appropriate parties in a timely manner.

Page 4A of the petition states that on October 4, 2007, I was given the deadline of October 18, 2007 to serve said Defendants (State of California & City of Oakland.) Federal Defendant deadline 3-20-08).with an Objection to their Motion to Dismiss. In this instance, I filed my objection before a deadline was ordered by the court. This is because I received the Motion to Dismiss before the court gave the order.

SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF ALAMEDA, MISCONDUCT

Proposition 215, Section C "The Compassionate Use Act of 1996" Section 11362.5(C) To encourage the Federal and State governments to implement a plan to provide for the safe and affordable distribution of marijuana to all patients in medical need of marijuana. The proposition was Voted into Law during a state-wide election, and as such it is the Will of the Citizens of the State of California.

It was the duty of the Superior Court of the State of California, in Alameda County, to uphold the Will of the California Voters, by enforcing the implementation of Section C of the Compassion Use Act of 1996.

Instead, the Superior Court chose partisan interests and politics to circumvent the will of the voters and by turning a blind eye, burying the facts and hiding the Truth, that there are finally two Federal hemp businesses that offer safe and affordable distribution of medical marijuana, by not implementing Section C, Prop 215, the Superior Court of the State of California **committed voter fraud**.

Change of Plea transcripts of 3/08/04, had its language altered. Petitioner's statements had been deleted: "I am advocate of medical and industrial hemp. I have a right as a landlord to rent on my land, charge a fee under contract."

Sentencing transcripts of 4/19/04, was not filed until almost a full year later on 3/09/2005. The following statements by Petitioner were deleted:

The Court: Sentencing conditions?

D.A.: Mr. Philipps may possess marijuana for personal use.

John Philipps: **And cultivate!**

The Court: What??

D.A. Mr. Philipps may grow.

The Court: **Federally?**

D.A: Yes, it is part of the Plea Agreement. Mr. Philipps cannot be a caregiver as he stated.

The Court: Are we finished?

The court proceedings adjourned immediately.

Any reasonable observer would conclude after combining the two sets of deleted statements, that John Philipps can grow marijuana federally and charge a fee under contract.

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EVIDENCE FOR FEDERAL GRAND JURY

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ITEM 14. Telephone records, 1993

ITEM 15. Two Subpoenas 2335A, 23357 Ransom

Item 1. Proof of Hand Delivery of Petitioners Objection to Respondents City of Oakland's Motion to Dismiss, Case No. C07-03885, by Professional Process Service to Law offices of: Scott N. Schools , U.S. Attorney. Sept 27, 2007, at 11:17am. These documents were delivered before the deadline set by Federal judge, Claudia Wilkens of 10-18-2007.Page 2. Extension of deadline for DEA Defendant to March 20th, 2008

Item 2. Extension of deadline for serving defendants, DEA, until Mar 20, 2008.

Item 3. Express Mail receipt to U.S. Attorney Michael D Pyle dated 3/19/2008, Certified Mail receipts for City of Oakland and State of California

Item 4. Receipts dated 9/29/07 as Proof of Service to Offices of DEA, Alexandria, VA, State of California, City of Oakland, Office of Attorney, Michael Pyle

Item 5. (top) Certified Receipts of Service to DEA, State of California dated 9/29/07

(middle of page.) **Office of Assessor** dated 1993 (bottom of page) **2003 Tax statement** addressed to 2337 Ransom

PG&E notice dated 1998 addressed to Wolford & Philipps re: Our Income Property

By distorting the facts, this is proof of intentional fabrication of evidence by DEA Nehring, not stating facts that Wolford receives mail at 2337 Ransom Ave ; Nehring omits that Wolford is my Real Estate partner. (See page. 12 of **Affidavit for Search Warrant** , Supplemental Brief, Separate Appendix) Paragraph 4 - Nehring refers to addresses of Wolford, 2337 Ransom Ave

Item 6A.,6B, p. 84. News article about the firing of Officer Rush, who was a witness in case #505113A and B. "Fruits of the Poisonous Tree".

(Middle) Item 6. Supplemental Clerk & Docket Minutes 4/6/05, Sworn Testimony of Officers Karla Rush OPD,

(Bottom) p. 84 lines 17-28, Officer Rush giving false testimony.of transcripts from 4-5-05 lines 17-22. Officer Rush lied about plants in basement of 2337 Ransom. 45 plants subtracted from 166 is 122. Attorney Lancaster was a personal friend for 40 years and had knowledge that there is no basement at 2337 Ransom.

Item 7. Court document dated 12/21/2004. This is where fraudulent case starts, Case #149732, Philipps A, Clancy B See **Patent Documents Separate Appendix, (W.C.)**, refer to page 16,

Philipps trailing docket #147116 not fraud case, #149732.

Item 8. Thumbprint is not mine; compare with my actual print outside of box. Fraudulent arraignment for 4/20/05, never taken out of cell on this date for prints.

Item 9. Top of page states Copy I have just received from Court Reporter (NOTE: No case number 149732 written by reporter on this document, See **Patent Documents Separate Appendix (W.C.)** p. 15 149732 handwritten for preliminary hearing, date 4/05/2005

Bottom of page DMV 1993 Printout, Residence Address as of 1988, lists address 2337 Ransom Ave, most recent address. Other address 1984 2337 Ransom Ave. **This is proof of intentional fabrication of evidence by Agent Nehring** not telling the truth in his **Affidavit for Search Warrant**, (see page 12, paragraph 3),

Subsequent inquiries of DMV records reveals the most recent address 2000; Agent Nehring omits fact that DMV automatically goes back 10 years for DL printouts of address.

Item 10. DEA Change of Plea dated 3/08/2004. Note that my trailing docket is #147116, NOT fraudulent case #149732, (see **Page 8**.)

Item 11. Affidavit for Search Warrant Filed 10/08/2003 with unknown arrest number or register number

Item 12. S/A Nehring makes statement that the only phone number for this structure is 510-261-7821 (See **Supplemental Brief, Separate Appendix** p. 14, Phone bill date 1993 for 510-261-7821) For the record John Phillips has had the same telephone number since 1974.

Item 13. California Fair Plan Assoc., Dwelling Fire Policy dated 1996: Insured Philipps and Wolford 2335 Ransom Ave, Apt A SEND TO: 2335 Ransom Ave, Apt A.

DEA agent Nehring does not reveal the fact that he is well aware that Mr. Wolford is my real estate partner. Insurance companies know the facts of physical addresses for insurance policy purchases, This demonstrates fabrication of evidence by Agent Nehring.

Item 14. Phone Bill date 1993, John Philipps, 2337 Ransom Av, 510-261-7821. Refer to page 12 of Affidavit for Search Warrant. Agent Nehring makes statement that this is the only phone number for this structure. Agent Nehring uses "basic investigative techniques wherein address and phone numbers, ownership and real property records reviewed by Special Agent Nehring," is

well aware after his investigation that records go back at least 10 years.

Item 15. Two Subpoenas included. County of Alameda, State of California, (Top) Addressed to Paulette Aveau, 2335 Ransom Ave, Apt. A, and the other subpoena (Bottom) addressed to John Philipps, 2337 Ransom Ave.

DEA Special Agent Brian Nehring has provided evidence in his Affidavit of Search Warrant that all other law enforcement agencies, the county recorder, the California DMV, Office of the City Attorney and the Oakland Police Department are aware of two separate structures with two different addresses on the Ransom Avenue plot. (See **Sanborn Map**, p. 21, Patent Documents Separate Appendix)

Despite all of this evidence, DEA Special Agent Brian Nehring chose to intentionally fabricate evidence to support the intentional false arrest of the Petitioner. Agent Nehring made false statements in official reports and violated the constitutional civil rights of John Philipps.

The examples above uncover a pattern of behavior involving intentional fabrication of evidence and proof of intentional false arrest beyond a reasonable doubt.

This is federal criminal misconduct by Agent Nehring.

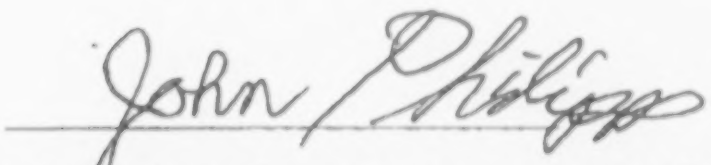
Combined with the California Superior Court's action of creating a fraudulent case. Along with the Court not implementing Section C of Prop 215, when the Court realized they had two lawful Federal marijuana businesses incarcerated in jail, any reasonable observer would conclude this is

EVIDENCE FOR FEDERAL GRAND JURY.

CONCLUSION

Therefore, I pray that this court grant me a federal grand jury, not only for justice for myself, but also Justice for the American people and the patients who need Federal medical marijuana.

Dated: February 17th, 2010



John Philipps, Petitioner in pro se, 2337 Ransom Avenue, Oakland CA 94601 (510) 261-7821 (510) 575-4782 1,694 words